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SUBJECT: TURKEY: CONSTITUTIONAL COURT CHIEF JUSTICE BERATES  
PRIME MINISTER

REF: ANKARA 1112

Classified By: Political Counselor Janice G. Weiner, for Reasons 1.4 (b  
,d)

[11.](#) (C) SUMMARY AND COMMENT. Responding to comments Prime Minister Tayyip Erdogan made on NTV May 29, Constitutional Court President Tulay Tugcu issued a forceful press statement the afternoon of May 30, asserting that the PM had insulted the court, sought to put the executive above the judiciary, and made the court a target. The public prosecutor had already initiated an investigation into the incident; while Erdogan is personally protected by parliamentary immunity, his words -- and the chief justice's judgment of them -- will undoubtedly be added to the growing files in the prosecutor's office on which a potential closure case against Erdogan,s Justice and Development Party (AKP) could be based. END SUMMARY AND COMMENT.

[12.](#) (U) Answering the questions of national news station NTV the evening of May 29, PM Erdogan criticized the decision of the Constitutional Court requiring parliament to achieve a quorum of 367 members before opening a session to elect a president. He said, "The decision of the Constitutional Court on 367 will be debated for a long time. The decision of the court was unfortunate and a shame for the judiciary. We have proceeded the way (former and current presidents) Demirel, Sezer, and Ozal were elected. Where were these judicial organs then? This decision was reached as a result of pressure." (In previous presidential elections, a quorum of 367 was not required and the issue was not referred to the courts.)

[13.](#) (U) Constitutional Court President Tulay Tugcu, in a prepared response the afternoon of May 30, declared that the Prime Minister's remarks reached the level of insult, a crime under the Turkish penal code, and said that he had crossed the line from criticism to "threats" and "animosity." Citing various articles of the Constitution, she stressed that the judiciary was independent and used its sovereignty in the name of the public. Members of the court had reached their decisions based on the oath they took upon ascending to the court. She accused the PM of trying to put the executive above the judiciary. Quoting directly from Erdogan's words, she argued that the PM had showed the court as a target. (This last charge echoes the recent speech of the chief judge of the highest administrative court, the Danistay (reftel),

which recalled the May 2006 attack on that court by a lone gunman after a newspaper had published pictures of court members presiding over a controversial decision.)

14. (C) A Danistay judge told us that Tugcu's press conference was an appropriate and measured response to Erdogan's insults. He claimed that all the members of the court (minus one, out sick) discussed and agreed to the statement, which therefore reflected the thinking of the court as a whole. The prosecutor's investigation is related to "insult to the moral personality of the institutions of the state," a crime punishable by jail time. Parliamentary immunity will protect Erdogan from this fate for now, unless a weaker post-election AKP fails to prevent his being stripped of it; the prosecutors will be waiting for the day Erdogan loses this protection, the judge claimed. However, while Tugcu has said that she will not pursue civil charges against Erdogan (against which he would not have immunity), other judges have not ruled out this option.

15. (C) A Justice Ministry judge provided a contrasting view. In his opinion, although Erdogan had clearly insulted the court, it would have been better had Tugcu not held a press conference. By publicly airing her anger at the PM, she dragged the court down into the muck of politics -- an unnecessary yielding of the moral high ground.

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